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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of privacy

FILE: [redacted] Office: Baltimore Date: AUG 28 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, and the order dismissing the appeal will be withdrawn. The application will be approved.

The applicant is a native and citizen of Argentina who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. In October 1977 the applicant married a citizen of Tanzania who held nonimmigrant G-4 status as a staff member of the International Monetary Fund (IMF). The applicant obtained G-4 status as his dependent. The applicant's husband retired from the IMF in September 1999 and accepted a position with the Central Bank of Tanzania. The applicant believes that her husband intends to reside abroad permanently and divorce is imminent as they have been separated since his departure.

The applicant is the beneficiary of an approved Petition for Alien Relative filed by her son in November 1999. The applicant seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly.

On appeal, counsel submits statements from the applicant's two U.S. citizen children, [redacted] now 24 years old and [redacted] now 23 years old, in which they describe their closeness to their mother. [redacted] discusses his problems with substance abuse and submits a report of his condition from a therapist. [redacted] statement indicates that he goes through periods of suicidal depression, is under continued observation by a physician and takes anti-depressants regularly. The statements indicate that both the son and daughter are dependent on the applicant for health benefits, and they both are over 22 years of age.

On May 18, 1993, the applicant was found guilty of the offense of Theft, over $300.00, committed on September 7, 1992. She was sentenced to three years incarceration, that sentence was suspended and she was ordered to pay restitution in the amount of $30,807.00. On October 28, 1999, the applicant's conviction was stricken, she was sentenced to probation before judgement and she was discharged from probation. On February 2, 2001, her arrest records were ordered expunged.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(i) Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who

admits committing acts which constitute the essential elements of-

> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime...is inadmissible.

Section 212(h) of the Act provides, in part, that:-The Attorney General [now Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I)...or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-
>
> > (i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> >
> > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> >
> > (iii) the alien has been rehabilitated; or
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien...and
>
> (2) the Attorney General in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status….

Here, fewer than 15 years have elapsed since the applicant committed the last violation. Therefore, the applicant is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family

member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

The record contains affidavits and a medical report relating to the applicant's son and daughter. A review of the documentation in the record, when considered in its totality, including the trauma that her son would experience due to his medical and psychological problems, and the financial and emotional hardships both adult children would experience, sufficiently establishes the existence of hardships that reach the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe.

Recent evidence in the record indicates the applicant has sufficiently reformed or rehabilitated to warrant a favorable exercise of discretion. The applicant's inadmissibility arises from a single act in 1992. The applicant has presented evidence that she has rehabilitated, is a responsible individual, has steady employment, and that her significance in the life of her son and daughter is critically important.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the order dismissing the appeal will be withdrawn. The appeal will be sustained, and the application will be approved.

ORDER: The motion is granted. The order of October 31, 2002, dismissing the appeal is withdrawn, and the application is approved.